

108TH CONGRESS
1ST SESSION

H. R. 2134

To amend title 18, United States Code, and the Federal Rules of Criminal Procedure with respect to bail bond forfeitures.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2003

Mr. KELLER (for himself, Mr. WEXLER, Mr. BAIRD, Mr. BASS, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. GINNY BROWN-WAITE of Florida, Mr. BURTON of Indiana, Mr. CARSON of Oklahoma, Mr. CONYERS, Mr. DAVIS of Florida, Mr. DEUTSCH, Mr. ENGLISH, Mr. FEENEY, Mr. HONDA, Mr. ISSA, Mr. McCOTTER, Mr. McDERMOTT, Mr. MEEHAN, Mr. MEEKS of New York, Mr. MICA, Mr. NADLER, Mr. PASCRELL, Mr. SCOTT of Virginia, Mr. THOMPSON of Mississippi, Mr. CHABOT, Ms. HART, Mr. GARRETT of New Jersey, Mr. OTTER, Mr. MURPHY, Mr. LAMPSON, and Mr. FOLEY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, and the Federal Rules of Criminal Procedure with respect to bail bond forfeitures.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Bail Bond Fairness
5 Act of 2003”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress makes the following
3 findings:

4 (1) Historically, the sole purpose of bail in the
5 United States was to ensure the defendant's physical
6 presence before a court. The bail bond would be de-
7 clared forfeited only when the defendant actually
8 failed to appear as ordered. Violations of other, col-
9 lateral conditions of release might cause release to
10 be revoked, but would not cause the bond to be for-
11 feited. This historical basis of bail bonds best served
12 the interests of the Federal criminal justice system.

13 (2) Currently, however, Federal judges have
14 merged the purposes of bail and other conditions of
15 release. These judges now order bonds forfeited in
16 cases in which the defendant actually appears as or-
17 dered but he fails to comply with some collateral
18 condition of release. The judges rely on Federal Rule
19 of Criminal Procedure 46(e) as authority to do so.

20 (3) Federal Rule of Criminal Procedure 46(e)
21 has withstood repeated court challenges. In cases
22 such as *United States v. Vaccaro*, 51 F.3d 189 (9th
23 Cir. 1995), the rule has been held to authorize Fed-
24 eral courts specifically to order bonds forfeited for
25 violation of collateral conditions of release and not
26 simply for failure to appear. Moreover, the Federal

1 courts have continued to uphold and expand the rule
2 because they find no evidence of congressional intent
3 to the contrary, specifically finding that the provi-
4 sions of the Bail Bond Act of 1984 were not in-
5 tended to supersede the rule.

6 (4) As a result, the underwriting of bonds for
7 Federal defendants has become virtually impossible.
8 Where once the bail agent was simply ensuring the
9 defendant's physical presence, the bail agent now
10 must guarantee the defendant's general good behav-
11 ior. Insofar as the risk for the bail agent has greatly
12 increased, the industry has been forced to adhere to
13 strict underwriting guidelines, in most cases requir-
14 ing full collateral. Consequently, the Federal crimi-
15 nal justice system has been deprived of any mean-
16 ingful bail bond option.

17 (5) In the absence of a meaningful bail bond
18 option, thousands of defendants in the Federal sys-
19 tem fail to show up for court appearances every
20 year. When this happens, the expense and effort by
21 Federal law enforcement officers to investigate and
22 apprehend defendants is wasted and the overall in-
23 terests of justice are thwarted.

24 (b) PURPOSES.—The purposes of this Act are—

1 (1) to restore bail bonds to their historical ori-
2 gin as a means solely to ensure the defendant’s
3 physical presence before a court; and

4 (2) to grant judges the authority to declare bail
5 bonds forfeited only where the defendant actually
6 fails to appear physically before a court as ordered
7 and not where the defendant violates some other col-
8 lateral condition of release.

9 **SEC. 3. FAIRNESS IN BAIL BOND FORFEITURE.**

10 (a)(1) Section 3146(d) of title 18, United States
11 Code, is amended by inserting at the end “The judicial
12 officer may not declare forfeited a bail bond for violation
13 of a release condition set forth in clauses (i)–(xi), (xiii),
14 or (xiv) of section 3142(c)(1)(B)”.

15 (2) Section 3148(a) of title 18, United States Code,
16 is amended by inserting at the end “Forfeiture of a bail
17 bond executed under clause (xii) of section 3142(c)(1)(B)
18 is not an available sanction under this section and such
19 forfeiture may be declared only pursuant to section
20 3146.”.

21 (b) Rule 46(e)(1) of the Federal Rules of Criminal
22 Procedure is amended by striking “there is a breach of
23 condition of a bond” and inserting “the defendant fails
24 to appear physically before the court”.

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